

TO THE BRITISH PUBLIC,

AND

Particularly to those who are Interested in

THE WELFARE AND PROSPERITY

OF THE

West India Colonies;

THE FOLLOWING ADDRESS IN ANSWER TO

A PUBLICATION OF THE BOARD OF

COUNCIL OF THE ISLAND OF

D O M I N I C A,

IS MOST

HUMBLY AND DUTIFULLY

INSCRIBED.



D O M I N I C A:

Printed at Mrs. BROWNE's, Office in Roseau;

1792.

AS The Question, on the Decision of our Judges of the Court of Common Pleas, to which the following Appeal, *materially relates*, must be peculiarly interesting to All those, who are, or may be connected with West-India Property; We shall present them with

A BRIEF STATEMENT OF THE CASE OF THE DOMINICA COURT-ACT.

THE LEGISLATURE of the Island, passed an Act the 14th day of Jan: 1791, continuing the Court-Act for *Four* months; and this short limitation, was merely for the purpose of keeping it in force 'till it could be amended, as it was very defective; the Assembly not imagining there would be any interruption to the Public Business.

On the 7th of February the Assembly was prorogued for three months, and afterwards for weeks and days until the 30th day of May.

On the 28th day of June, the Judges of the Court of Common Pleas, sitting in Court, declared that the Court-act, would expire the next day, and then adjourned the Court, 'till the next legal day of Meeting; since which Period, the Court has not sat.

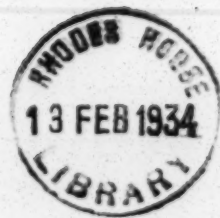
The Clause in the Court Act, which they said, authorized this decision, is as follows. "And be it and it is hereby further enacted by the authority aforesaid, that this Act shall be and continue in Force for and during the term of Four Months, from the publication thereof and from thence, until *Thirty Days after the then next Meeting*, of the Council and Assembly of the Island."

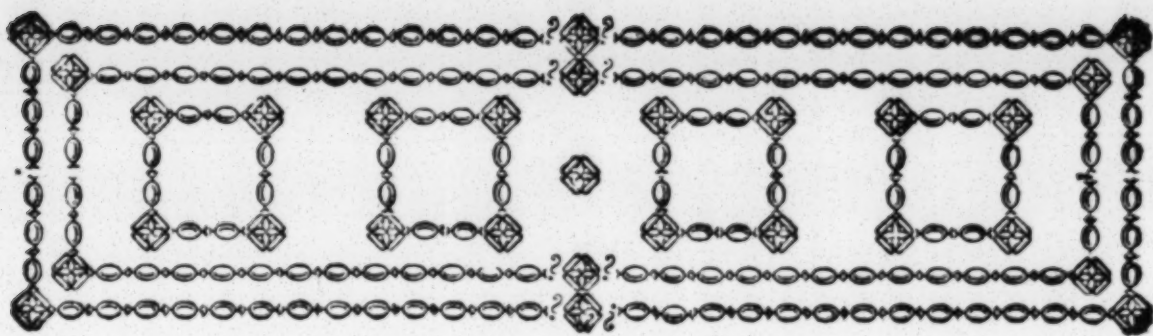
The Council and Assembly having never met since the 21. of Febrv. 1791, The Judges construed the *Day appointed for the Meeting*, to be, A bona fide Meeting, in the legal and particular Sense of the Law; this was the first ground: but, not being tenable. --- A Meeting or Session of the Three Branches, was endeavored to be proved by a Letter, passing between the Governor and the Speaker; and a Bill, delivered by the Messenger of the Council to the Clerk of the Assembly; this was the other Ground: and by these illegal and unnatural Constructions, are we still deprived of Our Laws, the Governor having become a party in and supporting the Decision of the Judges.

If it is asked, what were the reasons that prevented, a real *bona fide Meeting*, of the Council and Assembly? it is answered, that the Assembly declined meeting, merely to Preserve this very important Law in *Existence*; and the probability of its not being revived without Conditions that might have been incompatible with the rights and liberties of the People, arose, from the following declaration of the Governor, to the House of Assembly, in the last Message they ever received from him "that he could not give a preference (speaking of the Militia law) to any other object, however important," and from the Declaration in the Message of the Board of Council (published herein) "that they would do no more Business with the House of Assembly," which was also the last Message, the House received from them.

THE PUBLIC therefore, will decide, whether our Judges had any legal reason to shut up our Courts of Justice, or to persist in refusing to open them; And, whether the Assembly was not justified, in the first Instance, in declining to meet at so critical a Period, after such declarations, when so important a Law was about to expire, and might not have been continued, or revived.

The Question of meeting, or not meeting *now*, is on a much more important additional ground: it is to decide, whether a Governor, Judges, or Magistrates, can at any time refuse to execute the existing Laws? If they can, the Intention, and the Functions of the Legislative Body are *Nugatory* indeed!





TO
The *RESPECTABLE* and *INDEPENDENT*
FREEHOLDERS
OF THE ISLAND OF DOMINICA.



THE Legislative Council of this Island, styling themselves His Majesty's Legislative Council, who are not appointed, or removeable by, and, who are not responsible to You, for any part of their Conduct, having taken on them to address You on a subject that very materially concerns yourselves; it might not be prudent for Us perhaps, to remain silent during an interference, which, can have no other tendency, than to delude you away from Your Interests, and to take upon themselves the management of those Concerns, which You, have delegated to Us.

We think too highly of your judgment, to suppose that the publication of the Board of Council, has made the least impression upon your mind, in their favor, or, to our prejudice; nor, should we have taken any notice of it, if it was to be confined within the pale of this Community; but, as it is apparently written, with a view, to make an impression, and to prejudice Us, in another Quarter, We shall answer it with as much *Candor*, and with as much *Temper*, as may be consistent with the feelings of those, who have been accused by the Board, of Misrepresentations *ungenerous, unfounded & unjustifiable*.

The chief difficulty that occurs in preparing an Answer to this production of the Board, is to ascertain the principal Propositions, they would wish to establish; and, as they are involved together, in a
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Matters of various complicated Matter, We shall select them out and answer them separately, in order to render the arguments we may offer against them, as clear, and as distinct, as possible.

THE FIRST PROPOSITION,

STATES, "that the House of Assembly, was not justified in calling the Conduct, of the Board of Council, *extraordinary* and *presumptuous*." to which We answer, that the Epithets, made use of by the House of Assembly, particularly applied to the Resolutions and Messages, of the Board of Council, to the House, of the 3d of February 1791; and in order that the Public may fairly judge, whether the House was justifiable or not, We lay before them the Proceedings of that Day: And which, the Board of Council should have done, if they had acted with the *Candor* they professed in the preceding Paragraph, and not to have asserted, that the *first expressions* which could be deemed *offensive*, were made use of in the Messages of the House of Assembly.

The SPEAKER and HOUSE of ASSEMBLY

To

His Honor the President and Council.

THE House in answer to the Message and Resolves of the Honourable Board of the 29th January, are unanimously of opinion that as often as the Act to appoint an Agent to transact the Business of the Colony in Great Britain expires, it ought to be renewed by the Legislature; and when, from reasons inimical to the Interests of the People, the other Branches refuse to concur with the House in the nomination of a person eminently well qualified for that office, the duty of appointing necessarily devolves on the House of Assembly, to whom the People have delegated the protection of their Privileges and Properties---and that nomination becomes not only a duty but an Act of indispensable necessity; when, attempts of a dangerous tendency are made on the Rights of that People, by the other Branches of the Legislature.

The House are also unanimously of opinion that the second Resolve of the Board, not to pass any Bill whatsoever to raise money for the Payment of our Agent's Salary, is an Unconstitutional attempt, to interfere with the undoubted Privileges of the House, which has the unquestionable Power of appropriating the Monies, raised by Public Taxes, for the payment of the Public Debts; a Privilege, of which, the Representatives of the People have justly been at all Times tenacious, and which, they will never tamely surrender: the Conduct of Your Board therefore, in adopting these Resolutions, not only interferes with the Privileges, but injures the Credit of the People, And Your not passing the Act to establish a Public Treasury, is a Proof with the Message above alluded to, that You will neither consent to
raise

raise any more Money, nor to empower any Person to pay that away, which has been already raised.

The House of Assembly, have the utmost veneration for the Constitution of Great Britain; and it is only, by an adherence to the principles of that Constitution, that the People of this Colony, can expect either protection or security from the Acts of the Legislative Body. "If ever it should happen (says Judge Blackstone) that the Independence, of any one of the Three Branches should be lost, or that it should become subservient to the views of either of the other two, there would soon be an end to the Constitution."

This Observation, is but too just; and the House of Assembly have to lament, that there can exist in this Colony, so many Proofs of it.

House of Assembly 2d February 1791

THOMAS RAINY.
Speaker pro Tempore.

His Honor the PRESIDENT and COUNCIL
TO
Mr. SPEAKER and the GENTLEMEN of the House of Assembly.

The Board have come to a determination of answering the Message from your House Yesterday, with a view only to evince the moderation which marks their deliberations even in cases when a contrary conduct is provoked and would be justified.

The Board perceive with no less pain than astonishment, that your House in defiance of the Representations they have already made, continues to adhere to the extravagant opinion That an exclusive right exists in the Assembly to transact the Business of the Colony independent of the other Branches of the Legislature; aggravated by an unqualified charge against the Board of having acted in a manner inimically to the Interests of the Colony, and justifying on the plea of Public necessity, the act of resorting to such Unconstitutional Extremes.

In answer to Claims so undigested and wild, a common regard to Public decorum, forbids us to give language to the first Emotions they are calculated to excite; universal observation however points out, that Necessity of this sort has been the plea which Tyranny and Arbitrary Power has in all ages taken shelter under, and resorted to, in order to justify the subversion of Government and the annihilation of Public Rights; and the Board are happy to remark, that Claims so exorbitant are unprecedented in the Public Proceedings of any of our Sister Colonies, and are utterly dissimilar to any pretensions ever asserted by the Commons of Great Britain itself; except during that short and infamous Period preceeding the usurpation of Cromwell, which suddenly succeeded those pretensions and at once annihilated the whole Constitution.

As to the Charge, your House has been pleased to make against the Board, of having acted inimically to the Rights of the People of this Colony, The Board
firm

firm in their Public Honour and zealous Disposition to promote at all times the true and permanent interests of the Island, take up so unmerited a reproach as the inconsiderate effect of Party Spirit, which too frequently leads to accusations unfounded in fact, and which the Board presumes your House proposes to substantiate by similar evidence and procured by similar means with that, which has so little to the Credit and Justice of the Colony, supported the Prosecution against the first Branch of the Legislature.

Council Chamber ||
3d February 1791.

By Command
GRIFFIN CURTIS,
Clerk of the Council.

Council Chamber, 3d Feb. 1791

" On Motion made and seconded, It was Unanimously Resolved, That this Board having during the existence, of the present and former House of Assembly done all in its power to promote that harmony, with the other Branches of the Legislature, which is so necessary for the furtherance of Public Business; notwithstanding which, the House of Assembly, has not only arrogated to itself exclusive Rights wholly inconsistent with His Majesty's Instructions, and derogatory to the Constitution of this Country, and to the Rights and Privileges of this Board; but has at length in their Messages to the Board, made use of Language as unjustifiable, as unfounded, openly accusing the Board of acting inimically to the Interests of the Colony; that however willing and desirous the Board would have been to have maintained a good understanding with the House, yet the Board in the just and reasonable support of the Rights and Privileges delegated to them, as an Independent Branch of the Legislature, cannot consent to do any further business with the House of Assembly, until they shall have renounced all exclusive Right of Legislation, and the offensive parts of their Messages be done away."

We request the particular attention of the Public to these Documents.

The Message of the House of Assembly, was a Constitutional Remonstrance against certain Resolutions of the Board of Council, wherein the Board asserted, That the appointment of a separate Agent, was "repugnant to their privileges and unfounded in any Constitutional Right." &c also against their undue influence with the Colony Treasury at all Times, but particularly on that Occasion, as they had refused to pass the Bill regulating the duty of the Treasurer, on the Terms proposed, by the House of Assembly.

The Members of the Board of Council, whatever Rights and Privileges may appertain to them, are composed of Five, or Seven Individuals appointed and removable by the Governor, and most of them are bound to promote his Views and Measures, by Places, they hold under Him. The Individual Property, that all or either of the Members may possess in the Colony, can have no reference to their Public Conduct; The Principles of a free and independent mind are to

be found in every station of Life; from the highest to the lowest, and those whom Fortune has distinguished with her favours, and to whom age may have afforded experience, are notwithstanding frequently the foremost to sacrifice their Will and Opinions, at the shrine where their Vanity, their Ambition, or their Interest may be gratified.

The Members of the House of Assembly, are *unplaced and unpensioned*; are Freely Chosen, and delegated by the People, to represent the landed and commercial Interest of the Colony; and therefore are, or should be of more intrinsic weight in the scale of Legislative proceedings, than a Board of Council *so constituted and so dependent*: and surely therefore, the Conduct and the language of the Assembly on a point highly interesting to their Constituents, did not call for such unprovoked abuse from the Board of Council; neither was the House singular in their desire, to obtain a separate Agent from the Council or the Governor, such being an Appointment arising *ex necessitate rei*; as the sole object of it, was to support a Petition for a Redress of Grievances suffered under the Public measures of that very Governor and Board, which Appointment, has been allowed our Sister Colonies on similar occasions.

The Reflection which *closes* the Message is of a most indelicate Nature, and came with a very awkward grace from a Board, who, in the *Beginning* of it give themselves credit for their *Moderation*, and prove it by a direct attack on the nature of the evidence adduced in a cause *depending, and to be Ultimately decided by His Majesty*, wherein the Governor and themselves on one side, and the House of Assembly on the other, were the Parties.

The Board of Council not however satisfied with the measure of this Abuse; immediately entered into the Resolution of *not doing any more business with the Assembly*, and indirectly, Advised the Governor to dissolve them. Here, the Council not only adopted the example, they so much condemned in the short and infamous period alluded to, but went a little further; for that House of Commons having Voted the House of Lords *useless and dangerous*, we do not Recollect, *that they Refused to do business with them*; or advised the EXECUTIVE POWER to annihilate them. (a) We

(a) This Resolution was entered into, in order to afford the Governor a pretence, to prorogue or dissolve the House again; for, it was followed up, by a Message from the Board of Council to the Governor, enclosing the Resolution above mentioned, and informing the Governor, that it corresponded with a similar Resolution of their Predecessors, in the Year 1777 "a few days after which (say the Board) the then existing House of Assembly was Dissolved:" The Governor on the receipt of this, went immediately to the Council, and with the advice of the same Members, Prorogued the House for Three Months. By such unbecoming proceedings between the Governor and his Council, are the King's Minister's deceived, and the Colonies oppressed.

We therefore trust, that in every part of the British Dominions, the Conduct of the Dominica Council in this Instance, will not only be considered as *extraordinary and presumptuous*, but it will be held in *abhorrence* by every good Subject, as amounting nearly to a subversion of the Government.

II. PROPOSITION.

"That the Board, never set up His Majesty's Instructions as the Law of the Land; That the Board has, and of right ought to have, a respect for them, with whatever slight or disrespect they may be treated by others."

The Members of the House of Assembly, have not asserted that the Council particularly set up the Kings Instructions as the Law of the Land; but, the Expressions and the Conduct, of both the Governor and the Council, amount to declare as much.

The Governor, in his Message to the Assembly of the 18th Dec. 1790 asserts, "that the King's Instructions, are intended for the Benefit of the Government, to which in part, they serve as a Constitution is most certain;" And the Board asserts in this Publication, "That they have been communicated to the different Branches of the Colonial Legislatures, in order to avoid the waste of much time and trouble, in framing and passing Laws, which might militate with such Instructions."

The Power of preventing or dispensing with the Laws, which the Legislature of this Colony, may think proper to pass, must amount, in whatever quarter such a Power resides, to the exercise of a full Legislative Authority. If we were only to enact such Laws as we were permitted to enact, by the King's Instructions, they would necessarily become the *Rule of our conduct*, which would be a LAW to us, and might annihilate the Legislative Authority of the People, by rendering their Acts Non-effective, or by allowing the Governor to assent to them, only upon such Terms, as the Instructions he might from time to time procure, may Prescribe; and this would be contrary to His Majesty's most gracious intentions expressed in his Proclamation *which is the Constitution of this Colony* inviting us to Settle in the Island, wherein he expressly informs us of "*his Paternal Care for the security of the Liberties and Properties of those, who are and shall become Inhabitants thereof*" that "he has given Power to his Governors with the consent of his Council, & the REPRESENTATIVES of the PEOPLE, to make, constitute & ordain Laws, Statutes and Ordinances for the Public, Welfare and good Government of the People and Inhabitants thereof." The House of Assembly therefore, can receive no Instructions but from their CONSTITUENTS!

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There does not however, exist a greater source of Jealousy & Discord between the Governors and the People, than the King's Private Instructions to his Governors and Privy Council, which they enforce or dispense with, as may suit the Occasion.

His Majesty's Affectionate subjects in the Colonies (and however they may be *rated down and neglected at home*, are not less affectionate and loyal than are those, who enjoy the immediate attention and protection of Government) are in a very singular predicament, and are at a loss to reconcile their reverence for the attributes which belong to the Sovereign, with the effect of the Instructions, sent out to his Representative: We are informed of the Blessings of a British Government; We love our Sovereign, because he is just and beneficent; and yet, there is not an Act of Tyranny and Oppression committed on the People by his Governors and Privy Councils in the Colonies, but is declared by them, to be in obedience to the KING'S INSTRUCTIONS.

When the House of Assembly is to be Prorogued, the King's Instructions are sought for, and a pretence is soon found: When a Governor & a Privy Council wish to remove a Judge from Office, who, *may oppose their Political Measures*, it is done in obedience to the King's Instructions: But when the Independence of the Legislative Council is attacked and one of the Members is suspended, the King's Instruction that was intended to regulate if not to obviate so violent a Measure, is set aside.

When the People complain of the conduct of *the Judges, who support the Governor's Political Measures*, the King's Instructions that direct him to take especial care, "that all Judges, perform their several Duties without any delay or partiality," are no longer a rule for the Governor's Conduct; but, on the contrary, he declares "that he considers it essential, that the Judges of the King's Courts should be as free as possible from the influence or dread of any Authority, or Power interfering, between them and their Consciences," and necessarily upholds and justifies the Judges, in their Errors and Misconduct.

The Board have observed, "that, the King's Instructions to the Governor in Chief, of the Southern Charibbee Islands, for collecting the 4, 1-2 per Cent Duty on Produce, by no means applies to His Majesty's Instructions to his Governors, for passing Laws."

The Instruction above alluded to, seems to be of a Class superior to the usual Instructions, which in their nature are subject to innumerable variation: and, as we proved before, frequently dispensed with.

The venerable and truly eminent Judge, Lord Mansfield, before whom
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the Cause was tried, and very ably argued, by the present Attorney General Sir Archibald Mc Donald, declared the Instruction and the Proclamation that was issued in virtue thereof, for collecting that duty, *not to be Law in the Ceded Islands*, and *a fortiori* he must have deemed the other instructions still less binding on the Colonial Legislatures.

We are therefore of Opinion, That the Governor & the Privy Council have, and of right ought to have, a respect for the King's Instructions, and we know of *no Others*, whom they concern, that treat them with slight and disrespect, but *Themselves*.

III. PROPOSITION.

That all Laws are to be construed by the Judges, --- That in the Case of the Court Act, the Judges have decided, and their judgment, is not only unimpeached, but on the contrary, sanctioned by the Board of Council.

All Laws, are to be construed and judged of, by the Judges, and they are protected from Censure and Punishment, for what they do *Judicially*, by various Immunities, granted for wise and important purposes. --- In the Case of the Court-Act, the Judges have decided not *under*, but *against* the Law; against the clear letter and spirit of it; they have decided by an *unreasonable Construction*, not to be collected *out of the Words*, of the Act itself; and contrary to, *the true Intention* of the Makers of it; --- and the Injustice of this Decision, which deprives the Inhabitants, of the administration & benefit of the Laws, is aggravated, by the means employed to uphold and vindicate it.

That a Bench of Justices, should suffer itself to be influenced, by the Political Opinions of any one Branch of the Legislature, in the exercise of its high and sacred Functions, is almost beyond the stretch of credulity, in any person acquainted with the nature of their exalted Station, and the solemnity of the Oath taken in the face of the Court! and, that the Board of Council should declare, that the decision of the Judges, has been sanctioned by Them, is peculiarly indelicate towards this suffering and injured Community, because the sanction of the Council, without the approbation of the other Branches of the Legislature, is a *nullity* in the Constitution, & because, the *Judges* themselves, are the Members, and the *Majority*, of that BOARD.

We cannot find words to express our indignation at the assertion of the Board of Council, that the Decision of the Judges, is unimpeached, and that this Decision is the Law, and must remain so, until a Court paramount decides the contrary.

The Board of Council might have spared us the mortification to be told

told by them, that there cannot be a Court paramount to the Court of Common Pleas in this Colony, wherein the Judges will not be the very Members of the Council who have already sanctioned the Decision; and the conduct of the Members in this instance is a proof of the undue and unconstitutional advantage which they avail themselves of from the different Offices they hold; the very injurious effects of which, now felt, are so greatly to be feared, that we especially remonstrated against it, as will appear by the following Paragraph in our Petition to the Sovereign, from whom alone we can hope for the reversal of this illegal decision of the Court of Common Pleas.

"The Members of your Majesty's Executive Council are not only Members of the Legislative Council, but are Judges in the Court of King's Bench, Common Pleas, and Court of Errors, and sit also as Chancellors--Hence the Official Power they possess and may Exercise at pleasure, is, with its official Impunity, both Monstrous and Oppressive."

If the Board peruse the following extracts they will find the Form of the Impeachment alone is wanting; and, let that come when it may, the Board of Council will scarcely be the Court before whom the Judges will be tried.

EXTRACT, from a Petition of Eleven Members of the Assembly to His Majesty, dated Dominica October 1st. 1791.

"May it please Your Majesty, It was with astonishment, that, by the subsequent part of the Conduct of the Board of Council, we perceived, there was a premeditated Intention in that Board, that this necessary Law, should expire: (meaning the Court-Act.) For, finding the House determined, to resist every Art held out to induce them to assemble, Three of these very Members, in their capacities of Judges of the Court of Common Pleas, refused any longer to execute the Law, on the pretext of, its being Expired, contrary to the Letter and Spirit of the Law itself: thereby, setting their Judicial Opinions above the Authority of the Legislature: a Measure, incompatible with the principles of a free Government, and highly dangerous to Liberty & Justice.

EXTRACT, from a Petition of the Inhabitants to the King, dated in April 1792.

"The Documents which accompany this our humble Petition to Your Majesty, are proofs, of our respectful but ineffectual endeavors, to obtain the due and regular administration of Public Justice; which has been denied Your Majesty's dutiful Subjects in this Colony since the month of June last, in consequence of a misconstruction of the Words of the Law, pronounced by three Justices, in opposition to the most respectable and universally received Authorities: a Construction which, while it injured the credit of the Colony, has afforded impunity to guilt,
and

and exposed to irreparable danger & ruin, the Lives, Liberties & Properties, of industrious and innocent Citizens”

If these Extracts are not sufficient to satisfy the Board of Council, We request they would visit the Common Gaol, which by the Court-Act is allowed a General Delivery twice in every year; and, it is their especial duty so to do, as they are *ex Officio* Judges of the Courts of Criminal Law: and when they have reflected on the hard condition of the unfortunate Victims of this decision, who have been confined for so long a Time, (perhaps Innocent of the Crime, that has been laid to their charge,) if then appealing to the internal evidence of their Consciences, they should still be of opinion, that the Judges are unimpeached, We can assure them in that Case, We neither envy Them their Judgments, their Justice, or their Humanity!

IV. PROPOSITION.

“ That all Subordinate Officers, are bound by the Decision of the Judges, altho’ even any Judge could be found, who would take upon him to act in direct opposition to the Judgment of the whole Bench and the Opinion of this Board.” That, an Individual Justice is bound by it, notwithstanding his having differed in Opinion.”

There is in this Proposition, matter of so dangerous a tendency, that We are inclined to persuade ourselves, could never have proceeded from a Branch of the Legislature in a British Colony.

The *Clerk of the KING’S Bench*, is directed by the Court-Act, at his peril, to issue a Precept, for holding a Court of Grand Sessions of the Peace; and he has refused positively, (altho’ a ministerial Officer) to execute the Law; giving as his reason, that the *Judges, of the Court of Common Pleas*, had declared it was expired. So, that it would appear the Board of Council, not only sanction the Judges of the Court of Common Pleas, support a subordinate Servant in his misconduct and contempt of the Law, in obstructing the execution of Criminal process, but are so anxious the Laws, *should not be executed*, that they hold out an Opinion to influence and to intimidate an honest and upright Magistrate, in the performance of his Duty, and endeavour to render the Decision, of the Court of Common Pleas binding upon the Judges and Servants of all the other Courts and upon all the Magistrates of the Colony, not to execute the Court Act, or any other Law in a similar predicament.

This conduct of the Board, is the more unpardonable, as the Members are all of them Judges of the Court of King’s Bench, and with Mr. Gilon (the *Judge of the Court of Common Pleas*, who, in the Council, introduced

roduced these Observations in justification of *his conduct on the Bench*) so far exceeded the bounds of that candor and moderation, they are pleased to assume; that on the very day, they introduced them they deprived the President of the Council (*the Senior Judge on the Island*) of the privilege of entering his PROTEST, on the Minutes of the Council Board; wherein he stated his Opinion on the existence of the Court-Act, and declared his readiness at all Times, to execute the Law.

We shall render an essential Service to the Public, by adding this Protest to our Observations; as it conveys, irresistible Argument, to prove the *existence* of the Court Act, and which, the Board of Council for *some reasons or other*, were desirous to suppress.

THE PRESIDENT'S PROTEST.

I desire to enter my Protest, against the Resolution of the Board on Friday last, because I am satisfied the Court Act is in existence, and for the following reason, which is an Extract from a Letter I have had the honour to communicate to His Excellency Sir John Orde Bart. on the 12th Inst. as the eldest Assistant Justice of the Court of Common Pleas, and which I desire may be entered on the Minutes.

ALEXr. STEWART,
Member of the Council.

"I shall now advert to the subject of the Court Act, and as one of the eldest Judges of the Court of Common Pleas, avail myself of the opportunity which your Excellency's Letter of the 6th Inst. affords me, and shall deliver my opinion on this interesting business with the utmost deference and respect."

"Before I had the honour of perusing the Reports of His Majesty's Attorney and Solicitor General at home, I always considered the Court Act in existence from a knowledge of all circumstances, and from a clear conviction that under these circumstances which they appear to be ignorant of, the plain Letter and Spirit of the Law intended and ordained its existence; and the learned Reports of these respectable Crown Officers decide me more than ever in adhering to my former Opinions, and in my readiness at all times to execute the Law. They are clearly of Opinion, that its continuance depends upon the fact whether, there has been a Meeting of the Council and Assembly, and they lay a particular stress on the necessity of establishing that fact, by a statement of "what really passed in the Assembly, or between them or any persons respecting them and the Governor and Council, or any of them, on the day upon which it was convened, or any subsequent day."

"It is impossible, I humbly conceive, to establish a Meeting in the sense above alluded to, for there does not exist a Record, or Proof of any Business being done, between the Council and Assembly, since the month of May

May 1791; and therefore the Court Act must be in existence."

"In endeavouring to establish the Meeting, in the particular sense in which the Act in question may be considered, I am of opinion we must fail, and for a variety of reasons; for it appears, that former Legislatures, in the intent and meaning of the Clause, foresaw and were alarmed at the possible expiration of such important Laws in the midst of political Dissentions, or from accidents of Death, Sickness or Absence, when they might not be revived; and rendered it necessary, that two Branches of the Legislature, who are composed of a number of People, should be virtually and bona fide convened, and should actually meet and be able to do business before those Laws could possibly expire, because by such a Meeting alone they could be revived or continued."

"Your Excellency has the Prerogative of Proroguing the two Houses on the eve of the expiration of a Law, and preventing it by that means if you foresee any risk of its not being revived; and the Board of Council and House of Assembly may do the same by not meeting each other."

"I will not enter into the Merits of the Conduct of either of the Branches of the Legislature, but, from a consideration of these circumstances and persuaded that there has been no Meeting of the Council and Assembly, I am at all times ready to execute the Court Act, firmly and Conscientiously of Opinion, that it is in and never has been out of existence. Had I entertained a doubt on the subject, I should certainly have adopted the alternative suggested in the report of the highly respectable and learned Advisers of the Crown, and continued in the exercise of the functions of a Judge of the Court of Common Pleas, trusting that if upon a discussion of the subject it should be finally determined that the Law had expired, the Legislature would not have hesitated to ratify my Acts and afforded me an indemnity. In that case, the Community would have had the satisfaction to have enjoyed the due and necessary execution of the Laws, not liable to be dependent on or influenced by the Conduct of either of the Branches of the Legislature."

I have the honour to be Your

Excellency's most Obedt. Servt.

A. STEWART,

Senr. Asst. Justice,

Court of Common Pleas.

Roseau August 12th 1792.

V. PROPOSITION.

"That His Excellency Governor Orde, sent every Information in his power, to the King's Ministers, relative to the Court-Act."

We are of Opinion, Governor Orde did not send every Information in his power, because, the Governor did not require from the Clerk of the
House

House, and send Home, an authentic Copy of the Journals of the last Week's sitting of the Assembly signed by him, and certified by the Speaker, which transmitted officially, by the Governor to his Majesty's Secretary of State, would have been a full and satisfactory Evidence, to the King's Attorney & Solicitor General, that there had been *no Meeting of the Assembly*, and that no Business whatever had been transacted, between the two Branches, since the 2d day of February 1791, and such being particularly the information they wanted, it should have been sent home and the Governor, had it at all times in his power to procure it.

The Governor, it appears, did not wish to satisfy, the King's Ministers by authentic and official Documents, that there had *not been a Meeting of the Council and Assembly, & of course, that the Law, was in Existence*, because so far from complying with the King's Instructions, which, direct the Governor *to require*, Copies of the Minutes; *the Governor refused them, when delivered by the Clerk*; and altho' he promised to send, never sent for them afterwards: and because, it further appears the Governor was so anxious, to establish a *Meeting of the Council & Assembly*, to induce, the Law Officers at home, to declare that the *Act was Expired*; that he considers a Letter, passed between himself and the Speaker at his Seat in the Country, and a Bill delivered by the Messenger of the Board, to the Clerk of the House in the Town of Roseau, to amount to, *A communication or Session of the three Branches of the Legislature*: In proof of which, We refer the Readers to the following Authorities.

Extract from the Minutes of the Assembly of 27th January 1791.

The Clerk having Reported to the House, that in consequence of the 24th. Rule and the subsequent Resolution of the House, he had delivered to the Governor's Secretary a Copy of the Minutes from the 14th to the 18th of December inclusive, and of the 21st Instant; and that, on the Thursday following he had received the said copy of the minutes back again, accompanied by a Note from the Governor's Secretary, which he produced to the House.

ORDERED, *That the same be inserted in the Minutes of this day.*

" Mr. Walrond presents his compliments to Mr Collins and sends him the Minutes he left with him yesterday Evening, they would have been sent to him before, but he said he would call. Sir John declines seeing the Minutes M. Collins brought, but will call on the House when he wishes to see them. Wednesday Evening.

COPY of His Majesty's 33d. Instruction, certified by His Excellency Governor Orde.

You

" You are also to require from the Clerk of the Assembly of the said Island, or other proper Officers, Transcripts of all the Journals, and other Proceedings of the said Assembly, and all such Transcripts, should be fairly abstracted in the Margeants, to the End the same may in like manner be transmitted as aforesaid.

Signed, I. ORDE.

A true Copy,

FRANCIS COLLINS Clerk of the House of Assembly.

CERTIFICATES of Mr Collins, the Clerk of the Assembly

ROSEAU, Sept. 20th, 1791.

I do hereby Certify that Governor Orde has not, directly nor indirectly made any demand or requisition for a Copy of the Minutes of the House of Assembly from me since the date of Mr. Walrond's Note to me 27th Janry 1791,

FRANCIS COLLINS.

Clerk of the House of Assembly.

Dominica September 5th 1792.

I do hereby certify that the House of Assembly has not met to do Business either as a House or with the other two Branches of the Legislature since the 2d day of February 1791.

Fr. COLLINS.

*Clerk of the
House of Assembly.*

EXTRACT of a Letter from his Excellency Governor Orde, to His Majesty's Secretary of State dated the 13th December 1791, Published by Governor Orde's Secretary, in the Island of Dominica.

" I am truly sorry, that any Circumstance, should have arisen sufficient to prevent His Majesty's Law Officers from giving a decided Opinion on the subject of this Act, not only because it necessarily delays the full Orders, I should have hoped for my conduct on this occasion, but also because the matter being still left at issue, I fear the contest of Opinion will be so kept up, as to lessen the Prospect of Colonial Remedy.

In sending to Mr. Secretary Dundas a Copy of the Act on a clause in which the Question hinged, in sending the Minutes of the Legislative Council, comprehending the time from the day the Legislature was convened, to the time the Act was adjudged expired, with a Copy of a Correspondence between the Speaker of the House of Assembly and myself, that had taken place about the same period on a public subject, and which together mark the intercourse between the different Branches of the Legislature, or the Officers representing each, and in sending the Opinions of his Majesty's Law Officer

Officers here, I thought I had transmitted all that would be needful from this Country in aid of the various Documents which I suppose certainly lodged in the Office of His Majesty's Secretary of State, as well to enable his Majesty's Law Officers to decide the Question of the Expiration as on the Measures it might be necessary eventually to adopt. Copies of every Law Ordinance or Proclamation passed or issued since my being in this Government have regularly been transmitted, and I took it for granted the same Conduct must have been practised at all times elsewhere, the Instruction directing it appearing to be general.

As unfortunately it has never been the practice here to do the Legislative Business by Session, so it has not happened, that any Speech or Message have regularly been delivered from the Governor on each Meeting after Prorogation, &c. &c.: this Circumstance, joined to the Assembly having lately refused the Governor, the inspection of their Minutes, make it difficult to say what happened in that House on the day it was convened or after. That there was an Intercourse between the Council and Assembly by means of the Clerk and also between the Speaker & Myself, will appear from the Documents already sent, and it is further well known, that after my Letter to the Speaker, that Officer, with one or two other Members, regularly attended at the House, an hour or two in the following three or four Days.

VI. PROPOSITION.

"That, if Government or His Majesty's Governor, could be induced so to ill-treat and censure the Judges, as to appoint others in their room, it would be a nugatory measure unless those appointed, should before their appointment, undertake to be of a different Opinion, from the present Judges."

It would be an Act of Oppression in Government, or in the Governor to ill-treat and censure Judges at any time: but, it is the Governor's province to take especial Care, that all Judges perform their several Duties, without any delay or partiality; and when they deny or delay Justice under an existing Law, he has the Power of suspending them, or of appointing others in their room: We are therefore surprised, to observe in this part of the Publication of the Board of Council, (as a Branch of the Legislature) that the Board should conceive the due exercise of the Prerogative of the Executive Power, in any Instance whatever, could be nugatory: especially when it is directed to execute the Laws, which the Board, had a share in framing.---We are rather of Opinion therefore, if such be the case, that the Meeting of the Legislature, to pass any Laws at all will be a Nugatory Measure, at least it must be so, if neither the Judges, the Magistrates nor the Governor will execute them.

We

We never knew or heard, that His Majesty made any conditions with his Judges, to abide by this or that Opinion previous to their Appointment to Office, nor can we conceive what this insinuation would apply to, unless it was intended to inform this Community that Governor Orde, will appoint no other Judges whatever, than *such as previously engage to be of the same Opinion, with the present Judges, Who, are determined not to execute the Laws.*

VII. PROPOSITION,

“ The Board is under the necessity of denying also, their having ever attempted to dictate, to that House. ”

To this we shall reply, by selecting and stating one single Instance, of many that have occurred: wherein the Board has dictated to & interfered with the Representatives of the People, in a most Unconstitutional manner.

In the Month of January 1791. when his Majesty's 30th Regiment was about to leave this Colony, after a residence in it of nearly seven years, The Representatives of the People, were anxious to offer some Token of their gratitude to a Corps, who had served so long in the Colony, and this Token became in some measure *obligatory on the People*, as Governor Orde, had many years before, refused his Assent to a Vote *which had passed both Houses*, granting to the Officers of that Corps, the paltry Sum of £. 500. currency. The House of Assembly therefore prepared a Bill, which was to grant the Regiment the Sum of £. 500 currency, to purchase a Set of Mess Plate; and sent the *following* Message to the Board, after the Bill had gone up; having discovered that the Board were endeavoring to counteract the measure:

EXTRACT of a Message of the House of Assembly, to the Board of Council January 29th, 1791.

The House of Assembly, are however surprised, Your Board would propose to join the different Corps together, on this Occasion; thereby delaying a Public mark of the Gratitude of the Colony to the 30th Regiment, which is the more honorable by its being granted to them alone. The House of Assembly, sent up to your Board yesterday an Act, to confer a sincere, impartial & unexceptionable Token of the Public Gratitude to that Corps, which alone resided seven years in the Island: and they trust, no private or political Reasons, will induce the other Branches of the Legislature, to refuse their Assent to it; it is also a respectful Compliance with the application the Commander in chief of the Army, through His Excellency Governor Orde, has already made to this Colony, in favor of the Officers, and as it is directed to His Majesty's

ty's 30th Regiment of Foot, it is a Compliment, to the whole Corps; nor would the House wound a Soldier's sensibility, by supposing, that he would prefer the fleeting compensation of pecuniary Reward, to a Mark of Esteem, that may long continue to be a Testimony of their Merit & of our Gratitude.

The very respectful Remonstrance contained in the above Extract, had no effect on the Board; they sent down our Bill, with the following Amendments: Instead of £. 500 Sterling, they proposed £. 300 Sterling to be divided in the following manner: £. 100 to the 15th Regiment, and £. 100 to the 30th Regiment, £. 60, to a Detachment of the 60th Regiment, and £. 40, to a Company of Artillery, for the purpose of purchasing Medals.

The House of Assembly aware, that the intentions of the Board, were directed to render this Act of Justice and Gratitude abortive, and conscious of the eminent Services, which the Colony had recently derived from the 15th, 30th. and 60th Regiments and Royal Artillery under the able Command of Colonel Myers, in suppressing the Insurrection of our revolted Slaves, were determined, in order to obviate the objections suggested by the Board, in addition to their Vote of thanks to Col. Myers and the Troops, to vote a Sum of Money, *in common to the Garrison*; and came to the following Resolution, which they sent to the Board for their concurrence.

House of Assembly, Feby. 2d 1791.

“RESOLVED, That the Treasurer be empowered, to issue immediately out of the Public Treasury, to a Committee of the Council and Assembly to be nominated for that purpose, Five hundred pounds Currency; to be by them distributed amongst such Non-Commission Officers & private Men of His Majesty's Troops, as were employed in suppressing the Rebellion amongst the Slaves; for the purpose of replacing the Necessaries expended by them in that Service.”

To which Resolution, the Board returned an Answer, of which the following is an Extract.

“The Board is at a loss, to conceive in what way the Sum You mention can be paid, or the wants of the Persons, the House would be thought so much disposed to benefit, can be satisfied, with any sort of regard to consistency or Justice. The Board is still however desirous, to concur with your House, in doing that Justice which the Military so well deserve, if your House will give effect to your Vote, by *passing a Bill, to raise a sufficient Sum of Money*, for the purpose.

The Public therefore will judge, if it is possible there could be any interference

terference more direct and unconstitutional *towards the People of the Colony*, or more *indicate* towards the *Service of that Sovereign* who had reposed Confidence in the Board, by elevating the Members of it to their respective Stations, than the conduct they exhibited on this Occasion.

The alterations and amendments in the Bill, necessarily obliged the Assembly to abandon their intention of paying any Compliment to the different Corps, because the mode proposed, would have been *marked disrespect to the 30th Regt.* and as Military Men are united together by ties more honorable than those of Interest, would have been an *injury to all*.

The Board when they proposed their amendments, voting away the People's Money contrary to the wishes of the Peoples Representatives, *had of course enough in the Treasury*. But when the House met them on their own ground---still determined to over rule and oppose the proceedings of the House, the Board informed the House *there was no longer any Money in the Treasury*. We therefore trust the Public will not be a little surpris'd at the necessity which could have induced the Board to deny *after such a Conduct in the face of this Colony, their ever having attempted to dictate to the House of Assembly*.

Governor Orde to put the question out of all doubt, and to further the Views of the Council, prorogued the Assembly immediately *for three Months*, and the 30th Regt. left the Island after a residence of seven years, with the thanks and good wishes, (for that was all we were permitted to give them) of the Inhabitants of this Colony.

VIII. PROPOSITION.

"That contests between the House of Assembly and the Council Board, relative to the constitution of the Act for regulating a public Treasury, and appointing a Treasurer, had arisen in other Colonies, and that his Majesty had always decided in favor of the Opinion of the Dominica Council."

This Proposition, serves to explain the Conduct the Board of Council held towards the House of Assembly, relative to the Monies they were desirous to grant to His Majesty's Troops; and if the Lust of Power and Despotism, should lead the Council to insist upon so Unconstitutional a controul over the Public Purse, it will necessarily have the effect to urge the Representatives of the People, to assert with dignity & firmness, their undoubted right of *raising, appropriating, controlling, and examining* into the expenditure of their own Monies, and if eventually, they should be obliged to appeal to the Sovereign, it would be a treasonable offence to his Royal Justice, to suppose for a moment, that he
would

would refuse his affectionate Subjects in this Colony, any Right or Immunity, which he has already granted, to the Assemblies of our Sister Islands, or that he would OPPRESS us in order to support the Opinion of the Dominica Council.

These are the Principal Points that are worthy of our notice, and they involve questions of great Political importance to the interests of the People; we have been particular in answering them, because we are desirous the Public, before they judge, should know the motives of our Conduct, and the grounds on which we justify it. As to the Dialogue which is introduced between the House of Assembly, the Governor, the Council, and the Judges; it would be unbecoming the dignity of so serious a Subject, to advert to such ill-timed Ribaldry, or for us to treat with three bodies separately, *which we know are one and the same*, uniting with, and upholding each other: nor, are we desirous to undervalue the Compliment which the Board of Council is pleased to pay to Mr Rose the Secretary of the Treasury, by making any invidious comparison between the Public Conduct of Mr. Knox and that Gentleman, as far as regards the Interest of this Island. We will only observe that Mr Rose, as a respectable Proprietor, was treated by us with every degree of delicacy and attention; nor did the House of Assembly appoint another Agent, until Mr. Rose had declined to Act.

We shall therefore, now dismiss our Observations on the Publication of the Board of Council, and as the other Branches of the Legislature, are apparently taking leave of the Public with the fairest & the most plausible professions; it may be incumbent upon us----even in our separate capacities, to declare our sentiments in the same Public manner.

Uninfluenced by any other Authority than the Will and Welfare of our Constituents, We Solemnly declare to the World, that in our Opposition to Governor Orde, we have not been actuated by personal resentment towards him *as a Man*.---We have vigorously and steadily Opposed on Public Grounds, the Oppressive Measures of his Administration *as a Governor*.

In the Course of that Administration *he* has invariably pursued *his own Opinions*, supported and echoed back by four or five Individuals, dependent on, and devoted to him---and he has not only disdained to follow the honest and disinterested Advice of the People, spoken thro' their Representatives; but he has punished every Opposition to his Views and Opinions, with the Rod of an *all directing and relentless Power*.

In

In looking back to the opportunities the Governor has lost of rendering himself beloved, and the People flourishing, contented and happy, the regret we feel, is imbibed by a recollection that the Oppressions which we have so long suffered under, have not proceeded from the Measures which might have been dictated by the unfeeling *Avarice* of *Age*, or by the servile herd of Sycophants, with which *Ignorance & Office* are surrounded; but that they have been heaped upon us, by a Person, from whose external manners, education, and time of Life we might reasonably have expected the possession of those liberal, mild & ingenuous Qualities, that would have commanded the Affections and the Purses of the Colony.

The Dissentions which have prevailed during the last five years & still exist with unabated violence, have arisen solely, from these Grievances and Oppressions, which have increased, since *the Governors* *left return among us* in a regular progression, to such a Degree, that they are *totally insupportable*: For what is there wanting to fill up the measure of them? The Trade and Commerce of the Colony, which the Free Port Bill was intended to advance, has been so frequently checked by unnecessary Restrictions, that it is almost extinct, and the Islands in our neighbourhood are reaping the Advantages of that Commerce, which if it had been left, as free, as the Act intended it, would never have left us, and having left us, may never return!

The severest exactions have been levied on the People under the denomination of fees, without the consent of their Representatives!

Many respectable and worthy Citizens have been turned out of Office, without affording them one single charge of misconduct and neglect!

The Representatives of the People, have been prevented from constituting good and wholesome Laws, for their Government and Welfare by the Dictatorial Conduct of the other two Branches of the Legislature, and by repeated and most harassing Prorogations; and finally, to crown the whole, the Prerogative of the Executive Power, which has been so frequently exercised to *Oppress, is Denied*, when it is necessary to *Serve Us*, and when it is the only Constitutional remedy for the Grievances we experience from a want of the due and necessary execution of the existing Laws. The Judges and the Magistrates who are Members of the Council, are therefore supported by the Governor, in their Decision, not to administer Law and Justice; while they are publishing and circulating their dangerous declarations and opinions, under the color and in puny of their different Offices, *that the Laws are Expired*: a Declaration, which if the case was really so, which it is not, could answer no good purpose whatever, and
which

which we fear might already have excited tumult and disorder in the Island; if the Honest, Virtuous and Independent Body of the People, had not associated together, and exerted themselves to resist and to obviate the Effects of such imprudent Measures; and by that means preserved the Peace and Tranquility we at present enjoy: A Conduct, which will long remain, a signal and unanswerable Proof, of the strength and integrity of the Cause we are engaged in.

If we have done all in our power, to procure the removal of Governor Orde, it has been solely with a View, to relieve us from his *Measures*: And, in this Appeal to the Public: (which we hope will be final,) we must declare, that whoever may be our Governor, if the *same Measures* are pursued, we will steadily oppose them: And, we shall never think ourselves justified in meeting the other Branches of the Legislature, until *the Court-Act is regularly and duly administered.*

Because, we never will entail upon our Posterity, a Precedent, that in a future Moment of unsuspecting Confidence, may set afloat all the Landed and Commercial *Securities* of the Colony, and involve them in irreparable Ruin, by authorizing a Judge or a Magistrate to decide and Declare, *the Day appointed for the Meeting, was a bona Fide Meeting of the Council and Assembly; or that Letters passing, between A Governor and the Speaker at their different private Houses, and A Bill, delivered by the Messenger of the Council to the Clerk of the Assembly, amounts to A Communication or Session of the three Branches of the Legislature:* For such is the forced, absurd, & unnatural Construction, on which the Judges have decided the EXPIRATION of the COURT-ACT, and *annihilated the Jurisprudence of the COLONY.*

Animated by a persuasion of the rectitude of our Conduct and honored with the support and approbation of our Fellow Citizens, We have nothing to fear: and it shall be our especial duty on all Occasions (*In these Sentiments we have lived, and in these Sentiments we shall die,*) “ as
“ good & affectionate Subjects, to reverence the Crown, and yet guard
“ against corrupt and servile influence from those who are entrusted with
“ its Authority: to be Loyal, Yet Free; Obedient, and yet Independent:
“ and above every thing to hope that we may long, very long, continue
“ to be governed by a Sovereign, who in all those Public Acts that have
“ personally proceeded from himself hath manifested the highest Veneration
tion

tion for the free Constitution of Britain, and will therefore never harbour a thought or adopt a Persuasion, in any the remotest degree detrimental to OUR LIBERTIES.

THOMAS RAINY,
RICHARD HARPER,
JOHN BRUSH,
THOMAS ANKETTEL.

ROBERT BRADE,
JAMES BRUCE,
WILLIAM EYRE,
WILLIAM PAGAN.

Members of the House of Assembly, Dominica.

Roseau, September 20th 1792.

Omitted by mistake, in the Answer to the 8th Proposition.

If the Argument of the Board of Council relative to the Treasury Act, should be admitted, it would tend to deprive Us of the Benefits which our Sister Colonies derive from the Amendment of similar Laws: It will not only prevent the Colony from reaping the Benefits, that may reasonably be expected from this important Law, in an improved State; But, should the same Reasoning, be allowed to prevail generally, it would effectually preclude the Colony from reaping any future Benefit, from any Amendments we might propose, as to the Rest of our Laws; although some of these should appear to be copied Verbatim, from obsolete Laws of the old Islands. In the End, such Reasoning would supercede one of the most essential Duties of the Legislature, that of Revising and Correcting all the Laws that form the Code of this Colony, and of adapting them to Times and Circumstances.

R I P T.

SINCE the above Letter was written, a Proclamation has been Published in the Town of Roseau, apparently proceeding from the Sovereign: but really proceeding from the Governor and Council; in which the Public, as well as Individuals, are accused of promoting Discontent and Faction, and of Alarming and Disturbing the present Tranquillity of the Island.

We are not surpris'd at any Measure of Governor Orde's, however Violent and Intemperate it may be: But, it is with Concern we see Men so far forgetful of what is due to the Grave and Reputable Offices they hold as Councillors and Judges, to give their Consent and Countenance to Proceedings in direct Violation of every Principle of Candour and of Equity; to Pre-judge and Condemn without a Shadow of Proof, in a Cause wherein *they are a Party*: And while they are tolerating *their own Opinions* and insist upon their Consciences being left Free and Independent, Promulgating their Anathemas and their Censure against those who differ from *their* Opinions, and denounce them to the Community in which they are known and respected, by *unmerited* and *most unjust* Insinuations: a Conduct that can have no other Effect, than to prove how Weak and how Impotent are the Efforts of Defamation and Malice, when they are levelled at Public Integrity, Supported by Public Approbation.

E R R A T A.

In Proposition VII. for £. 500 Currency,
Read £. 500 Sterling.

